

120-167/12B6 Motion

PLAKINS RIEFFEL & RAY, P.C.

BY: DAVID C. RAY, ESQUIRE

Attorney I. D. No. 32436

140 East State Street

P.O. Box 1287

Doylestown, PA 18901

(215) 345-0801

Attorney for Defendant,

Paul Lenardson

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEBBIE FISHER

Plaintiff

v.

PEDRO ORTIZ, SHAN-LOR
TRUCKING EQUIPMENT

Defendants/Third Party Plaintiffs

v.

PAUL LEONARDSON

Third Party Defendant

No. 02-cv-3460

**THIRD PARTY DEFENDANT, PAUL LEONARDSON'S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(C) (VENUE)**

Third Party Defendant, Paul Lenardson ("Lenardson") by and through counsel, hereby moves this Honorable Court to Dismiss the instant Complaint pursuant to Federal Rule of Civil Procedure 12 (C), for lack of venue, and in so doing states as follows:

1. On February 4, 2000, a motor vehicle collision occurred in York County, Pennsylvania.

2. The afore mentioned collision was between a vehicle operated by Pedro Ortiz ("Ortiz"), of Dunkirk, New York, while in his employment for Shan-Lor Trucking ("Shan-Lor"), of Forksville, New York, and a vehicle operated by Debbie Fisher of Lebanon, Pennsylvania, and a vehicle operated by Timothy Connors, of Mechanicsburg, Pennsylvania.

3. As a result of the collision, Plaintiffs Timothy Connors and Debbie Fisher filed civil actions in York County, Pennsylvania. Thereafter, those actions were removed to the United States District Court for the Middle District of Pennsylvania by the original Defendants, Ortiz and Shan-Lor by virtue of diversity of citizenship. Copies of some of the Complaints filed in the Middle District, and dockets are attached collectively as Exhibit "A".

4. Ortiz and Shan-Lor filed third party complaints against Lenardson in the Middle District alleging, inter alia, that Lenardson was culpable for the accidents.

5. The Court in the Middle District, the Honorable Sylvia Rambo presiding, issued an Order consolidating the Fisher matter with the Lenardson matter because they arose from the same set of operative facts, to wit, the same collision, and for the purposes of judicial economy. A copy of the Order of Judge Rambo's is attached as Exhibit "B".

6. Concomitant with her filing a Complaint in York County, Pennsylvania, Plaintiff Fisher filed the same action in the Court of Common Pleas of Philadelphia County, which was removed to the United States District Court for

the Eastern District of Pennsylvania by Ortiz and Shan-Lor based upon diversity of citizenship and resulted in the above captioned docket number.

7. The Complaint pending before this Court, attached as Exhibit "C", contains the very same allegations and the same set of operative facts as the Complaint filed and pending in the United States District Court for the Middle District of Pennsylvania.

8. None of the allegations in the pleadings allege a connection, temporal or physical, with the Eastern District of Pennsylvania. On the contrary, the pleadings (**all**) allege that the motor vehicle collision occurred in York County, Pennsylvania, the Plaintiffs reside in Lebanon, Pennsylvania, and Mechanicsburg, Pennsylvania, the Defendants are citizens of the state of New York and the Third Party Defendant, Lenardson, is a citizen of the State of Maryland.

9. Indeed, discovery has been ongoing in the matters filed in the USDC for the Middle District of Pennsylvania, including written discovery and depositions in Harrisburg and Berks County, Pennsylvania. Copies of the face pages of the depositions taken are collectively attached as Exhibit "D".

10. As part of Plaintiff Fisher's self executing disclosures, Fisher supplied medical bills and reports, and wage information, all of which contains doctors, treating facilities and employers located within the area of the Middle District, and none of which are located in the Eastern District.

11. No where in the pleadings has Plaintiff Fisher set forth any facts which justify a finding that venue is proper in the Eastern District of Pennsylvania.

12. It would be a waste of judicial resources to allow two cases filed by the same person for allegations involving the same alleged operative facts to proceed in two separate courts simultaneously.

13. It is unfair, costly and prejudicial for the Defendants and Third Party Defendant to be forced to defend two actions in two different courts for the same set of operative facts simultaneously.

WHEREFORE, Third Party Defendant, Paul Lenardson, by his counsel, respectfully requests this Honorable Court to Dismiss the above captioned matter pursuant to Federal Rule of Civil Procedure 12 (C).

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BY: _____

David C. Ray, Esquire
Attorney I.D. #32436
140 East State Street
P.O. Box 1287
Doylestown, PA 18901
(215) 345-0801

Attorney for Paul Lenardson